

ENTERED

February 23, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISIONGUTHRIE ABBOTT, *et al.*,

Plaintiffs,

VS.

THE TORONTO-DOMINION BANK, *et al.*,

Defendants.

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CIVIL ACTION NO. 4:22-CV-00800

ORDER

Before the Court is OSIC's motion to exclude the expert opinion testimony of William B. Waldie and Lawrence M. Iwanski filed in the MDL Case No. 3:09-CV-2384-N-BQ, in 2021 [DE 907]. HSBC Bank file a response to OSIC's motion [DE 1021] and the matter is before the Court, having received by transfer or remand this case under the present cause number.

In its motion, OSIC challenges the qualifications of Waldie and Iwanski to give expert testimony because:

- a) Waldie concedes that he is not an expert concerning HSBC's compliance with United Kingdom, Panamanian AML and know your customer requirements; U.K.'s banking account monitoring practices and procedures, the Antiguan bank regulations and operations, nor OSIC's damages claims;
- b) Concerning the jurisdiction where HSBC's accounts were operating or controlled, Waldie admits that he is not an expert in banking regulations in the United States or Antigua or where any such accounts were controlled;

- c) a witness cannot opine concerning the state of mind of another, particularly an institute as here;
- d) Chapter 33 of the Texas Civil Practices & Remedies Code is inapplicable.

After a review of the motion, the response, case law and FRE, the Court concludes that in the areas identified heretofore, Waldie is not qualified to express expert opinions. The Court has also formally addressed the issue of responsible third party pleading and finds no basis to revisit its ruling. Therefore, Waldie is not permitted to give testimony on this issue.

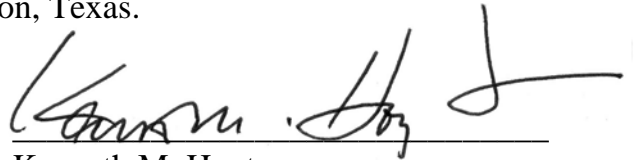
The Court is the same mind with regard to the expert opinions of Iwanski regarding HSBC's compliance with global "know your customer" and "anti-money laundering" regulations and particularly, whether HSBC complied with any such regulations. In the Court's opinion, a review of United Kingdom law on the occasion of this lawsuit does not qualify a witness to offer an opinion. The operative terms are "by education or experience", neither of which is apparent here. Moreover, the experience that Iwanski claims concerning the United States money laundering law do not automatically translate into expertise in the laws and regulations of the "anti-money laundering" and "know your customer" law, policies and procedures of the United Kingdom, Antigua or Panama. Moreover, neither Iwanski nor Waldie are experts in how and where global banks control or operate their external correspondent bank accounts. Iwanski admitted that he was not a legal expert, which lack also precludes any opinion concerning jurisdiction. And, the fact that he has not previously rendered testimony concerning damage calculations or

independently evaluated the account activities of OSIC's expert calculations means that he has nothing to offer a jury that an attorney for HSBC cannot present to a jury by cross-examination and/or argument against OSIC's claim for damages.

In light of Iwanski lack of experience in the areas identified, the Court holds that his testimony will not be received.

It is so Ordered.

SIGNED on February 23, 2023, at Houston, Texas.

A handwritten signature in black ink, appearing to read "Kenneth M. Hoyt", written over a horizontal line.

Kenneth M. Hoyt
United States District Judge